

U.S. DISTRICT &
BANKRUPTCY COURTS

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In re SAWTOOTH ENTERPRISES, INC. dba)	Case No. 96-03050 ACH
THE BUCKIN' BAGEL,)	
)	MEMORANDUM IN SUPPORT
)	OF MOTION TO DECLARE
)	THAT SALE OF PERSONAL
Debtor(s).)	PROPERTY DID NOT DIVEST
_____)	COUNTY'S LIEN

Ada County, Creditor, moves this Court for an Order declaring its personal property liens intact. The motion comes before the Court in order to clarify Ada County's lien status so that the County may pursue collecting the taxes owed. This motion is based on Local Bankruptcy Rules 2002.1 and 2002.2, and 11 U.S.C. 363(b)(1) and (f).

On November 27, 1996, Debtor Sawtooth Enterprises, Inc. (dba The Buckin' Bagel) filed a bankruptcy under Chapter 11. Notice of the Bankruptcy was not provided to Creditor Ada County (hereinafter "County"). (Affidavit of Barbara Bauer at 1.) At that time, Debtor owed the County personal property taxes in the amount of \$2,352.40. (Bauer Aff. at 2). On December 24, 1996, Debtor filed a Motion for Entry of Order Approving Sale of Property Free and Clear of Liens & Notice of Hearing. The County

MEMORANDUM IN SUPPORT OF MOTION TO DECLARE THAT SALE OF
PERSONAL PROPERTY DID NOT DIVEST COUNTY'S LIEN- PAGE 1

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was not included on Debtor's Notice of Service (Exhibit A) and, once again, the County received no notice. (Bauer Aff. at 1) On January 13, 1997, a hearing regarding the sale of the personal property was held before the Court. The County, not having received notice of the hearing, was not present. On January 23, 1997, a Court Order was issued which enabled all of the personal property owned by Debtor to be sold to Timothy Wells free and clear of liens and interests. At that time of sale the personal property taxes owed included \$2,352.40 plus late charge and interest for 1996 and \$2,272.39 for 1997 (Bauer Aff. at 2). The County received no notice of the order. (Bauer Aff. at 1.)

A. The County Was Denied Due Process

The sale was conducted pursuant to Local Bankruptcy Rule 2002.1, and 11 U.S.C. 363(b). Rule 2002.1 states, "A sale pursuant to Section 363(b), including a sale free and clear of any interest of an entity other than the estate, is initiated by notice and is subject to LBR 2002.2." The Local Rule requires that notice be given by mail to "all creditors." LBR 2002.2. 11 U.S.C. 363(b) requires notice and a hearing. Section 363(b)(1) states that estate property may be sold other than in the ordinary course of business only after "notice" appropriate in the circumstances.

The purpose behind mandatory prior notice is to satisfy the constitutional requirement of the due process clause of the Fifth Amendment to the United States Constitution. Due process requires that notice be given to a creditor whose property rights are being affected so that the creditor may have its day in court. *In re Fauchier*, 71 B.R. 212, 215 (9th Cir. BAP 1987). To comply with due process requirements, notice must be given that is "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306 (1950). The County received no notice of the bankruptcy, the motion for sale, or the order allowing the sale of the personal property.

Moreover, even *if* Ada County had received notice of the motion for the sale of the property, the County would have been led to believe that its interest was protected. Debtor's motion stated that the "personal property *is being sold subject to* the any [sic] *personal property taxes on that property.*" Debtor's Mot. Entry of Order Approv. Sale of Property Free and Clear of Liens & Not. of Hr'g. p. 5 (emphasis added).

However, Ada County did not receive notice. The notice given by Sawtooth Enterprises was not reasonably calculated to apprise the County of the pendency of the action and clearly did not afford the County an opportunity to present objections. As a result, the County was denied due process.

B. Idaho Law Requires Personal Property Tax to be Sold Upon Sale

The Motion for Entry of Order by Debtor was based on 11 U.S.C. Section 363(f)(1). That section states, "The trustee may sell property under subsection (b) or (c) of the section free and clear of any interest in such property of an entity other than the estate, *only if . . . applicable nonbankruptcy law permits sale of such property free and clear of such interest.*" 11 U.S.C. Section 363(f)(1) (emphasis added).

The nonbankruptcy law of the state of Idaho does not permit personal property to be sold free and clear of taxes. The Idaho Code requires that upon selling personal property, the taxes owed, both the current year and those taxes due and owing, shall be paid to the tax collector. The Idaho Code states:

Whenever any person, firm or corporation owning any personal property shall desire to remove the personal property from the county or sell or repossess the property before all property taxes due and payable *including the current year's taxes* have been paid upon the personal property, the property taxes shall be paid to the tax collector upon demand . . .

Idaho Code § 63-1014(1). In fact, in the strongest possible reflection of its intent, the Legislature has made it a criminal offense to sell personal property taxes:

It shall be a misdemeanor for any person, firm or corporation to move from the county or sell or repossess

MEMORANDUM IN SUPPORT OF MOTION TO DECLARE THAT SALE OF
PERSONAL PROPERTY DID NOT DIVEST COUNTY'S LIEN- PAGE 3

any personal property or manufactured home without the payment of the current year's property taxes or without paying property taxes due and owing, and upon conviction the person, firm or corporation shall, in addition to any penalty which the court may impose, pay to the tax collector a sum not in excess of double the amount of property tax which was collectible on the property removed or sold or repossessed, together with all costs and late charges provided for in this chapter. The excess sum shall be connected by the tax collector in the same manner as the original property tax.

Idaho Code § 63-1014(2). In accordance with Idaho law, since the sale of personal property to Tim Wells occurred on January 23, 1997, both the 1996 and the 1997 personal property taxes were owed to the County *upon sale*.

Based on the foregoing argument, the County respectfully requests the Court to declare that the sale of personal property to Tim Wells did not divest the County of its lien in the property and that the County may now proceed to collect the 1996 and 1997 personal property taxes.

DATED this 28th day of April, 1997.

GREG H. BOWER
Ada County Prosecuting Attorney

By: Valencia J. Bilyeu
Valencia J. Bilyeu
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of April, 1997, I served a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION TO DECLARE SALE OF PERSONAL PROPERTY DID NOT DIVEST COUNT OF ITS LIEN, to the following person(s) by the following method:

Joseph M. Meier
Cosh, Humphrey, Greener & Welsh
815 West Washington
Boise Idaho 83702

☒ Hand Delivery
☐ U.S. Mail
☐ Certified Mail
☐ Telecopy (FAX)

Stephen Drake
Moffatt, Thomas, Barrett, Rock & Fields
911 West Idaho Suite 300
Boise, Idaho 83701

☒ Hand Delivery
☐ U.S. Mail
☐ Certified Mail
☐ Telecopy (FAX)

Bernie R. Rakozy
Bankruptcy Trustee
824 West Franklin
Boise Idaho 83702

☒ Hand Delivery
☐ U.S. Mail
☐ Certified Mail
☐ Telecopy (FAX)

Alicia VanNewkirk

JOSEPH M. MEIER
COSHO, HUMPHREY, GREENER & WELSH, P.A.
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815 West Washington
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(208) 344-7811
Attorneys for Debtor-in Possession

U.S. COURT
DEC 24 PM 2:13
CLERK

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In Re:)	Chapter 11
)	Case No. 96-3050
Sawtooth Enterprises, Inc.)	
)	NOTICE OF SERVICE
)	
Debtor)	

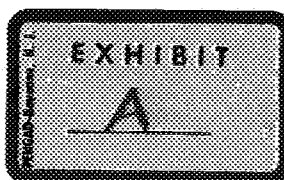
PLEASE TAKE NOTICE that on the 20th day of December, 1996, a true and correct copies of the **MOTION FOR ENTRY OF ORDER APPROVING SALE OF PROPERTY FREE AND CLEAR OF LIENS & NOTICE OF HEARING**, MOTION SEEKING AUTHORITY TO ASSUME AND ASSIGN FOUR LEASES OF REAL PROPERTY AND TO REJECT TWO LEASES OF REAL PROPERTY and NOTICE OF HEARING were served via U.S. Mail, postage prepaid, upon the following parties:

Kelly McConnell
Moffatt, Thomas, Barrett,
P.O. Box 829
Boise, ID 83701

Allen Pesky
PO Box 3876
Ketchum ID 83340

LDP Leasing
PO Box 3876
Ketchum ID 83340

Peter Stern
PO Box 458
Shelborne VT 5482



Internal Revenue Service
Chief Special Procedures
550 W Fort St, MSC 041
Boise ID 83724

Bank of America
PO Box 7400
Coeur d'Alene ID 83814

Sysco
5710 Pan Am Ave
Boise ID 83705

Avery Construction
611 N 7th St
Boise ID 83702

Cooper Norman & Co
156 Second Ave
Twin Falls ID 83303

Margaret Mead Trust
7941 W Rifleman
Boise ID 83704

Sonna Building Associates
910 Main St
Boise ID 83702

Westco
805 West 2500 S
Salt Lake City UT 84119

Kieffer Design Group
413 S 8th St
Boise ID 83702

Unisource
PO Box 3991
Seattle WA 98124

Hayden Beverage
PO Box 15619
Boise ID 83715

US West Communications
Salt Lake City UT 84135

State Insurance Fund
PO Box 83720
Boise ID 83720

Idaho Power
1221 W Idaho
Boise ID 83701

American Forms & Labels
910 W Amity
Boise ID 83715

Allied Bakery Equipment
270 Littlefield
San Francisco CA 94080

Mid Mountain Data Systems
11095 Executive
Boise ID 83712

Grasmick Produce
215 E 42nd St
Boise ID 83714

Associates Commercial Corp
PO Box 27113
Salt Lake City UT 84127

Deckers Inc
5198 Chinden Blvd
Boise ID 83714

Intermountain Gas
PO Box 64
Boise ID 83732

BS and R Equipment
PO Box 103
Twin Falls ID 83303

Swire Coca Cola
PO Box 1679
Salt Lake City UT 84110

American Yeast
3 A St
Derry NH 3038

S&G Produce
198 Locust St
Twin Falls ID 83301

Black Bear Incorporated
PO Box 2396
Ketchum ID 83340

Darigold
50 S Cole Rd
Boise ID 83709

Town Refrigeration Inc.
Friedman Indust
Hailey ID 83333

Nagel Beverage
5465 Irving
Boise ID 83706

Silver Creek Electric
PO Box 2672
Hailey ID 83333

JLA-Boise Inc
244 S Cole Rd
Boise ID 83709

KECH Radio
PO Box 2158
Ketchum ID 83340

Gem Linen
403 Main Ave W
Twin Falls ID 83303-3

Wood River Journal
160 2nd East
Ketchum ID 83340

Reed's Electrical Service
PO Box 2292
Hailey ID 83333

Air Touch Cellular
8050 W Rifleman
Boise ID 83704

The Travelers Commercial
Direct Billing
Philadelphia PA 19101-2

J Weil Foodservice
5907 Clinton
Boise ID 83704

Joan Donnelly Graphic
PO Box 3946
Ketchum ID 83340

All Electrice Inc
PO Box 3204
Boise ID 83703

Access Long Distance
PO Box 45469
Salt Lake City UT 84145-0

Idaho Statesman
PO Box 40
Boise ID 83707

Yellow Freight
1405 N Olive
Meridian ID 83642

TCI Cablevision
PO Box 91003
Seattle WA 98111

Phone Directories Co
PO Box
Provo UT 84603

Glenn Electric
2604 N Cole Rd
Boise ID 83704

Southern Idaho Distribution
1640 Kimberly R
Twin Falls ID 83303

City of Boise
PO Box 2760
Boise ID 83701

Ultratec Industries
291 S LaCieneg
Beverly Hills CA 90211

Kneeland Korb Collier
PO Box 249
Ketchum ID 83340

Hickey Foods
PO Box 2312
Sun Valley ID 83353

Wood River Rubbish
PO Box 130
Ketchum ID 83340

Service Master of Sun Valley
PO Box 611
Sun Valley ID 83353

Bressie Co Restaurant
7413 Mossy Cup
Boise ID 83709

Mark Knowles Architect
218 S Cole Rd
Boise ID 83709

Frito-Lay Inc
PO Box 660059
Dallas TX 75266

Boise Refrigeration Service
202 W 39th St
Boise ID 83714

Allison Fine Foods
PO Box 532
Sun Valley ID 83353

Terrell Inc
2307 S Curtis
Boise ID 83705

City of Ketchum
PO Box 2315
Ketchum ID 83340

Decker's Inc
PO Box 51268
Idaho Falls ID 83405

Business as Usual
PO Box 389
Sun Valley ID

Dalice Plumbing Inc
PO Box 15835
Boise ID 83715

KLCI-FM
Box 1280
Boise ID 83701

TCA Cable TV of Sun Valley
Gen Divr
Ketchum ID 83333

Idaho Mountain Express
PO Box 1013
Ketchum ID 83340

KSKY
Ketchum ID 83340

Royal Electric Inc
999 Federal Way
Boise ID 83705

Orkin
640 Jadwin Ave
Richland WA 99352

Idaho State Sales Tax
800 Park Blvd
Boise ID 83721

AT and T Long Distance
PO Box 78225
Phoenix AZ 85062

First Security Bank
Attn: Bob Blackburn
119 N 9th
Boise ID 83701

US Bank Leasing Co
PO Box 279
Beaverton OR 97075

Express Building LLC
2914 Montauk Avenue
Boise ID 83709

ATT Capital Corp
150 S Luna Road #134
Carrilton TX 75006

Austin Stewart
PO Box 6097
Ketchum ID

US Bank of Idaho
Main Office
PO Box 7009

Boise ID 83702

Hawley Troxell Ennis &
Attn: Patrick Collins
PO Box 1617
Boise ID 83701

Allison Horn
5030 Chaps Place
Boise, ID 83709

Amy Jorgensen
P.O. Box 928
Bellevue, ID 83332

Amy Holladay
3173 S. Apple #101
Boise, ID 83706

Amy Welch
1703 25th
Boise, ID 83702

Chris Justin Harris
6949 Rim Acers
Boise, ID 83709

Crystal Buggoine
8455 Midland
Boise, ID 83704

Erin Scott
3710 Conventry Dr.
Boise, ID 83704

Gregory L. Anderson
414 E. Ave. E.
Boise, ID 83712

Heather Marie Lang
9185 Levitt St.
Boise, ID 83704

Jason Knoeller
3706 E. Sweet Pea Ct.
Boise, ID 83705

Jeff Dearing
9542 Ramsgate
Boise, ID 83704

Ken McKenzie
23721 Canada
Star, ID 83669

Kristin Hall
2425 Ellis Ave.
Boise, ID 83703

Lane Sills
1125 Howe #06
Boise, ID 83706

Lisa Williams
131 Village Ln.
Boise, ID 83702

Marty Allen
1012 Longmont Ave. #201
Boise, ID 83705

Mike R. Meadows
4305 N. Jenniffer Pl.
Boise, ID 83704

Milton Jennings
P.O. Box 4664
Boise, ID 83711-4664

Miria Dingness
P.O. Box 928
Bellevue, ID 83313

Nancy Ramirez
P.O. Box 44664
Boise, ID 83711

Neile M. Hulsey
1119 1/2 N. 12th
Boise, ID 83702

Randy M. Rhuman
437 NW 6th St.
Ontario, OR 97914

Roger Henderson
1015 N. 12th St.
Boise, ID 83702

Theresa Desormeau
2101 N. Curran Pl.
Boise, ID 83704

Joseph M. Meier